

## Martin Henley

CALL: 2004

- Extradition
- Housing and General Civil
- Family (both public and private law)
- Children and Matrimonial Finance
- Criminal Defence

Martin has a solely defence practice in extradition and has developed unique arguments relating to the Extradition Act 2003. He has appeared at all levels from the Magistrates' Court up to and including the House of Lords.

### Notable Cases

#### Extradition

*Martuzevicius v UK* currently before the European Court of Human Rights in Strasbourg. This is a complex case involving a breach of the A3 rights of the Appellant by the UK authorities in that they failed to secure for him appropriate medical treatment in Broadmoor Hospital as a result of his category A status within the prison system. Also the UK courts should not have ordered extradition without seeking proper medical report on the Appellant's mental health (led by Alun Jones QC).

*Majchrzak v Holland* the Appellant was extradited to Holland despite his unlawful arrest and detention in the UK. It was always maintained that there was no evidence upon which to found a prosecution for murder in the UK and that he was an innocent man. After 10 months in prison in the UK and 12 months in prison in Holland Mr Majchrzak was released unconditionally by the Dutch courts because of the lack of evidence linking him with the alleged murder (led by Alun Jones QC).

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*Elashmawy v Italy* (2014) the leading case on Italian prison conditions has just been completed in front of a 3 judge Divisional Court and is awaiting judgment (led by Alun Jones QC).

*Wojcik v Poland* (2014) High Court discharged on the basis of the delay in issuing the EAW especially as nearly 3 years delay was caused by the NCA failing to realise that the Appellant lived in the UK despite a caution dating from 8 years previously.

*P v Poland* (2014) High Court appeal allowed and discharged in that it was disproportionate to extradite because of his family life and that his rehabilitation from alcoholism might be jeopardized.

*Poland v P* (2013) discharge on grounds of mental health.

*Hungary v M* (2014) discharge on human trafficking charges because the offence was extraterritorial not an offence in Hungary the particulars on the warrant were incorrect and thus invalid.

*Romania v M* (2014) discharged on the grounds of serious physical health issues.

*Mucelli v Albania, Moulai v Deputy Prosecutor of Creteil* [2009] UKHL 2 acted as junior for Mr Moulai the judicial authority failed in their appeal to the House of Lords from the High Court in *Moulai v Deputy Prosecutor of Creteil* [2008] 1 W.L.R. 2460 which successfully overturned established authority on the jurisdiction of the High Court to hear appeals where there has been a failure on the part of the appellant to serve the appeal notice in time. The House of Lords found that both serving and filing had to be within the required period (7 days) but that the statutory time limit for such filing and serving cannot be abridged by "rules of court" and therefore the deeming provisions of the Civil Procedure Rules have no effect. There has recently been a further relaxation in the harsh reality of strict filing rules by the Supreme Court in the case of *Pomiechewski*.

*McKenzie v Spain* [2008] EWHC 3187 (Admin) successful challenge in the Divisional Court of the High Court to the findings of fact of the District Judge and permission granted to adduce fresh evidence.

*Kolanowski v Poland* [2009] EWHC 1509 (Admin) in the Divisional Court of the High Court; appellant granted 6 month postponement to extradition order due to his serious heart condition.

*Rozakmens v Latvia* [2010] EWHC 3500 (Admin) drink driving conviction failed the dual criminality test and was discharged

*Targosinski v Poland* [2011] EWHC 312 (Admin) and *Tworkowski v Poland* [2011] overturned established authority such that a DJ cannot refuse to hear evidence at first instance and must conduct a proper enquiry into any Human Rights arguments under s21 of the Extradition Act 2003.

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*Zacharski v Poland* [2011] EWHC 2386 (Admin) the contention that an European Arrest Warrant which contained both accusation and conviction cases was invalid was rejected by the Administrative Court but because the matter had only been before the court on one previous occasion the judge certified that it was a question of general public importance. However permission was refused by the Supreme Court.

### **Public Law**

*Ghai v Newcastle City Council* [2010] EWCA Civ 59 junior council for Mr Ghai in his successful appeal to the Court of Appeal against the High Court's refusal to grant judicial review of the council's refusal to allow Mr Ghai to be cremated in accordance with his Hindu beliefs on an open air funeral pyre.

*Hakki v CMEC* [2011] successfully showed in the Upper Tribunal that profits from "professional gambling" could not be periodical payments within the meaning of the child support regulations. However contrary to a wealth of authority within income tax cases the Upper Tribunal ruled that "professional gambling" could be self employment for the purposes of social security calculations. This decision is currently awaiting permission to appeal from the Court of Appeal.

*Singh v Commissioners of HMRCs* [2011] successfully obtained permission to judicially review the decision of the Commissioners to refuse permission of the Claimant to appeal out of time for an amendment to an assessment of income tax because the notice of appeal had been served late. The Commissioners had failed to properly direct themselves where the burden and standard of proof lay given that the notice had been posted by first class post and there was a rebuttable presumption under the Interpretation Act that the notice was deemed served once it had been posted. Thus the burden had been on HMRCs to prove that they had not received the notice rather than on the Claimant to prove that he had. There was no evidence before the Commissioners from which they could have come to the conclusion that HMRCs had not received the notice and therefore permission was granted.

*Hakki v SSDWP & Blair* [2014] successfully appealed the decision of the Upper Tribunal in the Court of Appeal. Had the original decision of the Upper Tribunal stood then potentially millions of regular gamblers might have been liable to pay class 2 NI contributions. This key judgment reaffirms the authority of *Graham v Green* which sets out that gambling cannot be a trade adventure profession or vocation. This authority of the High Court had stood for 90 years and had never been challenged in the Court of Appeal. The Upper Tribunal had found that, in the context of Social Security, gambling could be a trade profession or vocation thus meaning that Mr Hakki whose only source of income had been from playing poker would be assessable for child maintenance under the Child Support Act. The Court of Appeal declined to overturn *Graham v Green* and found that Mr Hakki's poker playing was not a seeking after emoluments and was therefore not a trade profession or vocation. They further found that contrary to the finding of the Upper Tribunal the income tax regime and

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the social security regimes were aligned such that the definition of self employment in the social security context could not have a wider meaning than the income tax definition.

## **Family**

*I v K* 6 day fact finding in the County Court private law proceedings.

*A v B* 5 day final hearing in private law proceedings in the High Court.

*M v G* 4 day final hearing in care proceedings.

*L v I* fact finding and then final hearing of complex care proceedings involving multiple fathers and children in the High Court; successfully challenged an inchoate care plan where there was inadequate financial support for the father to care for his children at home.

*K v B* as junior counsel advised on the prospects of appealing out of time to the Court of Appeal where the finding of facts were subsequently in conflict with an alleged perpetrator's acquittal on charges relating to child cruelty.

*S v S* successful appeal against transfer of residence in a parental alienation syndrome case. The DJ who had heard the case had not had expert evidence in the form of a psychiatric/psychological report and had refused to adjourn further even though the CAFCASS officer in an addendum report had recommended that such a report should be prepared.

## **Housing**

*Raihani v RB Kensington & Chelsea* [2008] appeal in Central London County Court against the order of DJ to amend a defective possession order when there was no court record or tape of the decision. The judge had substituted his decision for the judge of first instance's decision and in doing so had acted in excess of his jurisdiction in his use of the slip rule. This rule can only reflect the first thoughts of the judge at first instance in rectifying genuine mistakes or errors and not be second or new thoughts.

*Raglan HA v Bailey* [2009] successfully opposed in the County Court an application for a forthwith possession order after the Magistrates' Court had made a three month closure order on the property.

*Quadrant Housing v Theophile* [2010] in Central London County Court successfully set aside a 3 year old possession order and in the alternative permission granted to appeal out of time on the basis that the Defendant was a patient due to his mental health issues. In the light of the order the claimant compromised proceedings and withdrew the possession claim.

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*Wandsworth v Abraham [2011]* successfully defended possession proceedings by the use of a counterclaim for disrepair. After a 4 day trial the counterclaim was only partially successful but it meant that the arrears of rent were so small that it was no longer reasonable to make the order. (Even though the factual case disintegrated under cross examination, keeping the court clearly focused on the admitted disrepair resulted in a satisfactory outcome for the tenant.)

## **Crime**

*R v Krezolek [2013]* junior counsel in the notorious murder trial of the stepfather of Daniel Pelka, the 4 ½ year old boy who died as a result of a blow to the head.

*R v Low [2009]* EWCA Crim 1031 Court of Appeal complex legal argument on the licensing requirements of the European Regulations governing the import and sale of endangered species under the CITES treaty.

*R v H [2008]* H acquitted on one count of rape and one count of theft

*R v M & P [2009]* secured acquittal of P on 8 counts of historic sexual abuse of under 13 year old, co accused M was sentenced to indeterminate sentence for protection of the public with a minimum term of 7 years for the rape of the complainant.

*R v Jouman [2012]* Court of Appeal unsuccessful appeal against conviction (permission granted) involving admissibility of video evidence and the direction of the jury as to the subjective limb of dishonesty.

## **Qualifications**

- Postgraduate diploma in law – Manchester Metropolitan University
- BA – mathematics – University of Essex
- LLB – Open University

## **Experience**

Martin is a late entrant to the bar. He has had a varied career firstly teaching in Liverpool and Sierra Leone and latterly running a print business.

For two years prior to coming to the bar Martin was a paralegal for the Rights and Advice Consultancy a specialist practice working on complex public law children matters and judicial review and actions against local authorities especially where there had been a failure by a local authority to protect children from serious sexual abuse.

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